

REMARKS

This responds to the Office Action mailed on September 7, 2005.

Claims 1-15, 17-23, 25-31, 33-34 and 37-41 are now pending in this application.

§102 and 103 Rejections of the Claims

Claim 1 was rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Coberfin et al. (U.S. Patent No. 6,269,243) in view of Zicker (U.S. Patent No. 5,995,833). The rejections are respectfully traversed.

Claim 1 specifically recites that the controller controls RF emissions of the phone as a function of detected RF emissions to maintain the RF emissions below a predetermined level. Coberfin et al. appears to compel the phones to “operate at a very reduced power” Col. 4, lines 30-32. While there is reference to a “power auto-matching system built in the standard manner” into the phones, there is no description of what this is. It could be that the means of authority in the Coberfin et al. simply commands the phone to operate at a predetermined low power, without detecting RF emission power levels. The phones themselves are indicated as implementing the power auto-matching system, which also alleviates the need for the means of authority to detect power levels. There are several ways that Coberfin et al. could operate to not allow interference.

The Office Action states that controlling RF emissions of the separate wireless phone, as a function of detected RF emissions is inherent. Applicant respectfully disagrees because the Office Action has not established a *prima facie* case of inherency. As recited in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art,” citing Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

The Office Action states that detection of power levels is needed to detect if the RF emission is equal to or above the interference level. Applicant respectfully disagrees. First, an assumption that the power level is detected, and emission are controlled in Coberfin et al. is simply not supported by a reading of Coberfin et al. Coberfin et al. may just “compel” or command the wireless device to operate at a very reduced power level. This could accomplish the result of no interference, and does not require that the levels be detected. Thus, it does not

necessarily flow that Coberfin et al. needs to detect power levels. In fact, Coberfin et al. is silent on how the power level is reduced, other than a vague reference to “a power auto-matching system built in the standard manner into said radiocommunication means R.” Col. 4, lines 35-37. Even this reference teaches away from detecting power levels at the controller, since the mechanism appears to be built into the phone, not the controller, as claimed.

The Office Action relies in inherency in three separate locations in the rejection. In addition to controlling RF emissions of the phones as a function of detected RF emissions, the Office Action also indicates that “an RF detector that detects RF emissions of the separate wireless phone” is inherent “since in order to control and maintain the RF emission, an RF detector is needed”. As shown above, this is not true. Coberfin et al. indicates that the phone is just controlled to operate at a very reduced power. This could be accomplished by simply telling the phone to operate at such a predetermined low power level. The level could be low enough that it cannot interfere. This is also consistent with other portions of the Coberfin et al. text, where use of the phones can be disabled “at low altitudes in order to minimize any risk...” Col. 3, lines 15-21. Thus, Coberfin et al. is capable of controlling the phones based on altitude, without detecting RF power levels.

A third assertion of inherency refers to “a controller coupled to the RF detector.” Since it has been shown that no detector is required, this also fails to be a characteristic that necessarily flows from the teaching of Coberfin et al. As each alleged inherent characteristic is shown not to necessarily flow from the teaching of Coberfin et al., the rejection should be withdrawn.

The Office Action also provides an alternative rejection based on the combination of Coberfin et al. with Zicker. Since there is no reason given for combining the references, a prima facie case of obviousness has not been established, and the rejection should be withdrawn.

Allowable Subject Matter

Applicant thanks the Examiner for the indications of allowable subject matter.

Claims 8,12, 18, 26, 34 and 41 were allowed previously with the reason set forth in the previous Office Action dated March 8, 2005.

Claim 13 was amended to include the allowable subject matter of claim 16. Therefore, claim 13 is now allowable with the same reason set forth in the previous Office Action dated March 8, 2005.

Claims 19 was amended to include the allowable subject matter of claim 24. Therefore, claim 19 is now allowable with the same reason set forth in the previous Office Action dated March 8, 2005.

Claim 27 was amended to include the allowable subject matter of claim 32. Therefore, claim 27 is now allowable with the same reason set forth in the previous Office Action date March 8, 2005.

Claim 37 was amended to include the allowable subject matter of claim 39. Therefore, claim 37 is now allowable with the same reason set forth in the previous Office Action dated March 8, 2005.

Claims 2-7 and 9-11 depend on claim 8. Therefore, they are allowable.

Claims 14-15 and 17 depend on claim 13. Therefore, they are allowable.

Claims 20-23 and 25 depend on claim 19. Therefore, they are allowable.

Claims 28-31 and 33 depend on claim 27. Therefore, they are allowable.

Claims 38 and 40 depend on claim 37. Therefore, they are allowable.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6972 to facilitate prosecution of this application.


If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

By their Representatives,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 11th day of October, 2005.



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